

**SUBCHAPTER O: PUBLIC NOTICE FOR MARINE SEAWATER DESALINATION
PROJECTS**

**§§39.901 - 39.903
Effective December 8, 2016**

§39.901. Applicability.

The provisions of this subchapter establish the public notice process for treated marine seawater discharge permits and off-shore discharge permits from marine seawater desalination projects under Texas Water Code, Chapter 18. For the purposes of this subchapter, the terms "Treated marine seawater," "Off-shore discharges," and "Marine seawater desalination project" have the same meaning as the definitions of these terms found in §318.2 of this title (relating to Definitions).

Adopted November 16, 2016

Effective December 8, 2016

§39.902. Public Notice and Comment for Treated Marine Seawater Discharges.

(a) Filing the administrative record. After the technical review is completed, the executive director shall file the application, draft permit, technical summary, and draft notice of application and preliminary decision with the chief clerk.

(b) Notice text. The notice of application and preliminary decision must contain the following information:

(1) the permit number;

(2) the name, address, and telephone number of the applicant;

(3) a brief description of the location and nature of the proposed marine seawater desalination project, including the location of each outfall and the total quantity of water proposed to be discharged by the facility;

(4) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(5) if applicable, a statement that the application is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(6) the website address where the administratively and technically complete application, the draft permit, and the technical summary are posted for public review;

(7) a brief description of public comment procedures, including:

(A) a description of the manner in which comments regarding the executive director's preliminary decision may be submitted;

(B) the deadline to file comments; and

(C) the deadline to request a public meeting or a contested case hearing;

(8) a statement that the executive director will respond to comments raising issues that are timely received and are relevant, material, or otherwise significant;

(9) a brief description of procedures by which the public may request a public meeting and a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility will be located or there is substantial public interest in the proposed activity;

(10) a statement that there is an opportunity for a contested case hearing, the procedures by which the public may request a contested case hearing, and that only disputed issues of fact or mixed issues of fact and law that are relevant and material to the commission's decision that are raised during the comment period can be considered if a contested case hearing is granted;

(11) a statement that the executive director may issue final approval of the application unless a timely contested case hearing request is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(12) the name and telephone number of an agency contact that interested persons may contact for further information; and

(13) any additional information required by the executive director.

(c) Publication of the notice. The notice of application and preliminary decision, the administratively and technically complete application, the draft permit, and the technical summary, excluding oversized documents, will be posted on the TCEQ website for public review and comment. Concurrently with posting on the

website, the notice of application and preliminary decision will be emailed to the email address on file with the Office of the Chief Clerk for the following individuals and agencies:

(1) the state senator and the state representative who represent the area where the facility is or will be located;

(2) the Texas Parks and Wildlife Department;

(3) the Texas General Land Office;

(4) the county judge who represents the area where the facility is or will be located; and

(5) persons on the mailing lists required by §39.407 of this title (relating to Mailing Lists) that have provided a valid email address.

(d) Amendment after notice. No amendments to an application which would constitute a major amendment under the terms of §318.6 of this title (relating to Amendment of a Permit) can be made by the applicant after the notice of application and preliminary decision has been posted on the TCEQ website, unless new notice is posted on the TCEQ website which includes a description of the proposed amendments to the application. For purposes of this subsection, an attempted transfer of an application shall constitute an amendment requiring additional notice.

(e) Public comment. Public comments must be filed with the chief clerk within the time period specified in the notice. The public notice period shall end 15 calendar days after the date of posting on the TCEQ website unless extended by the executive director for good cause. The public comment period shall be extended to the close of any public meeting.

(f) Public meeting notice. Notice of a public meeting must include the following information:

(1) the information required by subsection (b)(1) - (3) and (12) of this section;

(2) the date, time, and place of the meeting;

(3) a brief description of the nature and purpose of the meeting, including the applicable rules and procedures; and

(4) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's

preliminary decision may be submitted and a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

(g) Recipients of public meeting notice. Notice of a public meeting will be mailed or emailed to any person who submitted comments or requested a public meeting; emailed to the state senator and the state representative who represent the area where the facility is or will be located, the Texas Parks and Wildlife Department, and the Texas General Land Office; emailed to the county judge who represents the area where the facility is or will be located; and posted on the TCEQ website at least 14 calendar days prior to the meeting date. The chief clerk need not mail or email notice of the public meeting to persons submitting public comment or public meeting requests who have not provided a return mailing address or email address.

Adopted November 16, 2016

Effective December 8, 2016

§39.903. Public Notice and Comment for Off-Shore Discharges.

(a) Filing the administrative record. After the technical review is completed, the executive director shall file the application, draft permit, technical summary, and draft notice of application and preliminary decision with the chief clerk.

(b) Notice text. The notice of application and preliminary decision must contain the following information:

(1) the permit number;

(2) the name, address, and telephone number of the applicant;

(3) a brief description of the location and nature of the proposed marine seawater desalination project, including the location of each outfall and the total quantity of water proposed to be discharged by the facility;

(4) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(5) a statement that the application is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(6) the website address where the administratively and technically complete application, the draft permit, and the technical summary are posted for public review;

(7) a description of the manner in which comments regarding the executive director's preliminary decision may be submitted and the deadline to file comments;

(8) a statement that the executive director will evaluate comments raising issues that are timely received and are relevant, material, or otherwise significant and develop a final technical summary;

(9) the name and telephone number of an agency contact that interested persons may contact for further information; and

(10) any additional information required by the executive director.

(c) Publication of the notice. The notice of application and preliminary decision, the administratively and technically complete application, the draft permit, and the technical summary, excluding oversized documents, will be posted on the TCEQ website for public review and comment. Concurrently with posting on the website, the notice of application and preliminary decision will be emailed to the email address on file with the Office of the Chief Clerk for the following individuals and agencies:

(1) the state senator and the state representative who represent the area where the facility is or will be located;

(2) the Texas Parks and Wildlife Department;

(3) the Texas General Land Office;

(4) the county judge who represents the area where the facility is or will be located; and

(5) persons on the mailing lists required by §39.407 of this title (relating to Mailing Lists) that have provided a valid email address.

(d) Amendment after notice. No amendments to an application which would constitute a major amendment under the terms of §318.6 of this title (relating to Amendment of a Permit) can be made by the applicant after the notice of application and preliminary decision has been posted on the TCEQ website, unless new notice is posted on the TCEQ website which includes a description of the proposed amendments to the application. For purposes of this subsection, an

attempted transfer of an application shall constitute an amendment requiring additional notice.

(e) Public comment. Public comment must be filed with the chief clerk within the time period specified in the notice. The public notice period shall end 15 calendar days after the date of posting on the TCEQ website unless extended by the executive director for good cause. A public comment that is not filed with the chief clerk by the deadline provided in the notice shall be accepted by the chief clerk and placed in the application file but the chief clerk shall not process it.

(f) Response to comments and final decision. After the close of the comment period, the executive director shall:

(1) evaluate all timely received and relevant, material, or otherwise significant issues raised in public comments;

(2) develop a final technical summary which includes:

(A) a summary of all timely received and relevant, material, or otherwise significant issues raised in public comments;

(B) a response to the issues raised in public comments; and

(C) a summary of the executive director's final decision;

(3) revise the draft permit in response to comments, if necessary; and

(4) file the final technical summary and revised draft permit, if applicable, with the chief clerk within the shortest practical time after the comment period ends.

Adopted November 16, 2016

Effective December 8, 2016